IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6216 OF 2005

Smt.Rukmini Shyam Bagul : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.S.M.Subrad for the petitioner.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader for the respondent nos.1 and 2.

Mr.Amit Borkar for the respondent no.3.

Mr.P.N.Joshi for the respondent nos.4 to 9.

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CORAM : S.A. BOBDE, J.

October 21, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioner has challenged the order dated 9.9.2005 passed by the District Deputy Registrar, Co-operative Societies, Nashik, declaring that the respondent nos.5 to

9 herein are entitled to act as Directors of the society and may be permitted to participate in the meeting of the society.

3. Mr.Subrad, the learned counsel for the petitioner, who claims to be the Chairman of the society, submits that the society has by an order dated 16.8.2005 at exh.'B' colly. removed the respondent nos.5 to 9 as Directors on the ground of their absence in accordance with the bye-laws of the society. In these circumstances, the District Deputy Registrar was not entitled to grant a declaration as he has done by the impugned order.

4. Mr.Joshi, the learned counsel for the respondent nos.5 to 9, submits that the said respondents have been removed by preparing false and illegal minutes and, therefore, the District Deputy Registrar was entitled to say that he has not held the said respondents as disqualified which, in fact, he has not.

5. It may be a fact that the District Deputy Registrar may not have removed the Directors under section 78 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". However, it is clear that the District Deputy Registrar could not have passed the order

holding that the respondent nos.5 to 9 are existing Directors without setting aside the Resolution of the society removing them as such and further that they are entitled to participate in the meetings of the society as such. It appears from the record that the respondent nos.5 to 9 appear to have been removed by Resolution dated 16.8.2005 of the respondent-society. If this Resolution is illegal, then it is for those affected therein to challenge the said Resolution. Admittedly, they have not done so. In this background, I find the order of the District Deputy Registrar wholly illegal and unsustainable, firstly, because it is passed without issuing any notice to the petitioner or the society which is represented by Mr.Borkar, Advocate; and secondly, it is not at all clear under which provision of law the District Deputy Registrar has passed this order declaring that the respondents continue to be the Directors. There appears to be no lis before him under any of the provisions of the Act.

6. In this view of the matter, the impugned order is, therefore, set aside. The parties shall be at liberty to take such appropriate proceedings as may be advised, in accordance with law.

7. The rule is made absolute in the above terms.

S.A. BOBDE, J.